

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

DOCKET FILE COPY ORIGINAL

Elehue Kawika Freemon and
Lucille Freemon
Complainants,

v

CC Docket No. 94-89
File No. E-90-393

American Telephone and Telegraph Company
Defendant.

Presiding Administrative Law Judge Walter C. Miller

FEB 1 1995

Reply

Pursuant to Administrative Law Judge Walter C. Miller, order FCC 94M-644, released: December 15, 1994 the following, proposed by Complainant Mr. Elehue K. Freemon in regards to AT&T Corp. proposed fact and conclusions and Memorandum in Support of Proposed Conclusions of Law January 30, 1995 submits the following Reply.

PF 1 Agreed in part to ,

" On May 30, 1988 at approximately 10:30 p.m., complainant Mr. Elehue K. Freemon "... , " ... place along distance collect telephone call from his home in Gresham, Oregon, to his mother Lucille K. Freemon, in Long Beach California."

See AT&T Exhibit 7, page 4. para. 2, lines 1 though 8 (Formal Complainant)

Disagree to " ... attempted to ... "

See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition]
page 71, line 17 through page 72, line 19.

PF 2 Agree in part ;

844

Disagree to " evening ". The time " evening " covers a time period of 12:00 pm afternoon to the period of 10:30 pm that evening of over ten and an half hours for the safe consumption of over the counter / non prescription pills and wine. *

See Judge's Exhibit 1 [Elehue K. Freemon Deposition], p. 183
lines 10 to lines 20.

PF 3 **Agree**

PF 4 **Agreed in part to ,**

Mr. Elehue K. Freemon placed a call, and was connected to an AT&T long distance operator, Ms. Nancy Zolnikov.

See AT&T Exhibit 7, page 4. para. 2, lines 1 though 8 (Formal Complaint)

Disagree to " ... attempted to ... "

See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition]
page 71, line 17 through page 72, line 19.

PF 5 **Agree in part;** When Mr. Freemon was connected to Ms. Zolnikov and began speaking to her, he was breathing heavily, ... ", due to bouncing on the trampoline.

See Judge's Exhibit 1 [Elehue K. Freemon Deposition], p. 182, lines 1 to 2; page 183, lines 2 to 3.

Disagree to ; " and his speech was confused and disoriented."

See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 52, lines 16 to page 53, lines 5 , page 54, line 7 though page 57, line 6, see PF 1 and PF 4 [call completed from proper

information given by Mr. Freeman]. See Moss v. The State of Texas, cite 539 S.W. 2nd, pages 950 and 951 [31].¹

PF 6 Disagree to ; " Mr. Freeman initially could not state what service or assistance he needed from Ms Zolnikov"

See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 52, lines 16 to page 53, lines 5 and page 54, line 7 though page 57, line 6; AT&T Exhibit 7, page 4. para. 2, lines 1 though 4 (Formal Complaint) [mom " to mean Mrs. Lucille K. Freeman her proper family title / name], see PF 5.

PF 7 Agree in part;

See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 52, lines 16 to page 53, lines 5 , page 54, line 7 though page 57, line 6; AT&T Exhibit 7, page 4. para. 2, lines 1 though 4 (Formal Complainant)

PF 8 Agree to ;

See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 52, lines 16 to page 53, lines 5 , page 54, line 7 though page 57, line 6; AT&T Exhibit 7, page 4. para. 2, lines 1 though 4 (Formal Complaint)

¹ See Moss v. The State of Texas, cite 539 S.W. 2nd, pages 950 and 951 [31] ,[page 951"... opinion in this respect was based on the hearsay statement of another psychiatrist." to which Ms. Nancy Zolnikov [non medical / non certified First Aid person , see Judge's Exhibit 3 [Ms. Nancy Zolnikov Deposition], page 60, lines 5 to 14] , AT&T's very broad and vague Privacy of Communication and emergency policy 1.0 though 3.0 and AT&T's lack of proper certified first aid training procedures [not found in AT&T operator training programs] demonstrates the same instance of insufficiency of evidence " in supporting AT&T's and 911's findings. See Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 57, lines 20 to page 61, lines 16; see PC 8, further more the comparison of Ms Nancy Zolnikov medical training is so inferior in comparison to the "psychiatrist in MOSS that using the legally prescribed consent procure would have avoided the false imprisonment, loss of right to due process, the economic hardship and the misunderstandings creating loss between a son and mothers relationship put upon Mr. Freeman.

PF 9 **Agree to;**

To placing a collect call to Mrs. Freemon by Ms. Nancy Zolnikov.

PF 10 **Agree to;**

To never hearing any sounds after hearing the operator, Ms. Zolnikov, state "Go ahead ".

PF 11 **Disagree to; " Just give him medical help. He needs medical help." [Mr. Freemon] by Mrs. Freemon**

See; AT&T Exhibit 7, page 14, line 20 to lines 27 (Formal Complaint, Mrs. Freemon Affidavit, February 9, 1989), Starting from line 20, " AT&T operator: " He might Need Help!" " to line 27 " Mrs. Freemon: "I don't want the Police there"".

See Public Law 90 - 154 component 12, Federal Emergency Management Agency, lg 220/ July 1984, " Consent "; see PF 5

PF 12 **Disagree to; ".. then dropped off, ..."**

See AT&T Exhibit 7, page 14, line 28 to lines 32 (Formal Complaint, Mrs. Freemon Affidavit, February 9, 1989); See PF 15 Judge's Exhibit 3 [Ms. Nancy Zolnikov Deposition], page 93, lines 1 to 5 , actual floor operations (Ms Nancy Zolnikov statement) " ... hold that little button so you won't transmit any messages. ", [operators control over parties lines]. see 5

Further **Disagree to; " ... simply informing OES that Mr. Freemon needed assistance."**

See Hearing Designation Order FCC 94-192 Released: August 12, 1994, page 2 [footnote 6] line 5 in regards to the " **Second pleading** ", see PF 5

Agreed to; ".. Ms. Zolnikov then routed the phone call to Oregon Emergency Services ("OES") in Portland, Oregon ..."

PF 13 Disagree to;

" ... personnel at OES, and not Ms Zolnikov, made an independent determination, based on their experience and training, to send police to the residence of Mr. Freemon. "

There is no such thing as an independent determination from an guiding source which was the operator. Therefore " independent determination " used by AT&T is misleading . The definition of independent (American HE Dictionary) 2. free from the influence, guidance or control of others, self reliant. **

AT&T has based this whole statement on hearsay. AT&T has no foundation from OES on their operating procedures nor has it offered any facts from OES as to how this 911 call was handle, on May 30, 1988 at 10:30 pm as Mr. Freemon has attempted to do so

See Hearing Designation Order FCC 94-192 Released: August 12, 1994, page 2 [footnote 6] line 5 in regards to the " **Second pleading** "; AT&T Exhibit 7, page 15, line 28 to lines 32 (Formal Complaint, Mrs. Freemon Affidavit, February 9, 1989); AT&T's Exhibit ; Mrs. Lucille K. Freemon's Deposition Page 36, line 25 to Page 37, line 2 . AT&T statement is hearsay FRE 901 (a), FRE 901 (b) (1).

PF 14 Disagree to;

The statement is misleading in its proper usage of the words divulge, intercept in association with interrupt.

The call being intercepted would mean per AT&T's definitions at Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 19, line 21 to 24 "...Did you divulge - that's kind of a fancy legal word for tell - anything that Mr. Freemon may have said to his mother on May 30th, 1988, to the Oregon emergency services or anyone else? " ; Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 20, line 1 to 4 "...that's kind of a fancy legal word which means to listen in on.

As defined Webster's dictionary New World page 318, 1. to break into (a discussion etc.), 2. to make a break in the continuity of.

This blatant attempted to mis-characterize Mrs. Lucille K. Freemon and Ms. Nancy Zolnikov shows a direct attempt to mislead the FCC commission and Administrative Law Judge Miller, tinting Mr. Freemon and this hearing. **

PF 15 Disagree to; " ... the undisputed evidence ...is inconsistent with the operational and transmission characteristics of the Traffic Service Position System ("TSPS") used by AT&T to serve operator- assisted calls from Mr. Freemon's exchange. "

See; AT&T Ex. 4 (B) page 5 line 8 to page 6 line 14 versus AT&T's Emergency procedures.; Judge's Exhibit 3 [Ms. Nancy Zolnikov Deposition], page 93, lines 1 to 5 , actual floor operations (Ms Nancy Zolnikov statement) " ... hold that little button so you won't transmit any messages. " vs. Mr. Sharpe's testimony at AT&T Ex. 4 (B) page 6, line 7 to line 26. see PF 5; FRE 901 (a).

PF 16 Disagree to; " ... had taken place in the manner that Mr. Freemon has claimed (and there is no evidence that it did) ... "

See; AT&T Ex. 4 (B) page 5 line 8 to page 6 line 14 versus AT&T's Emergency procedures.; Judge's Exhibit 3 [Ms Nancy Zolnikov Deposition], page 93, lines 1 to 5 , actual floor operations (Ms Nancy Zolnikov statement) " ... hold that little button so you won't transmit any messages. " vs. Mr. Sharpe's testimony at AT&T Ex. 4 (B) page 6, line 7 to line 26; see PF 5. **

PF 17 Disagree;

At Linda Wistermayer [AT&T exhibit A, page 5, lines 21 to page 22 to line 2] the AT&T Code of Conduct as AT&T exhibit 4, mentions two parts of the operators conduct. Each shows three exceptions to AT&T's procedure which are due to broad and vague outlines.

See [Exceptions] AT&T Exhibit 4, para. 5, line 3 and 4; para. 6, line 4 to 6; AT&T Exhibit 3, page 2, " The Most Significant Items in Handling Emergency Call Are: ", 3.01 (c), (e), (f); Mrs. Linda Wistermayer was not at Ms. Nancy Zolnikov's console on May 30, 1988 at 10:30 pm therefore FRE 901 (a), and FRE 901 (b) (1) applies.

PF18 **Disagree;**

See PF 17 this text.

PF19 **Disagree;**

See PF 17 this text.

Disagree to the use of this outdated research material. " The complainants themselves concede that the interception and divulgence they complain of were "direct violations of AT&T policy ..."

PF 13, 14, 16 is AT&T's first of now three attempts to mislead the FCC and to mis-characterize the Freemons' investigation in this text alone. The information used by AT&T at PF 19 was taken before the AT&T's policies and practices were given and reviewed by the complainants with much objection and time delays from AT&T. **

See PF 14; AT&T Exhibit 17, page 3, para. 7; See [Exceptions] AT&T Exhibit 4, para. 5, line 3 and 4; para. 6, line 4 to 6; AT&T Exhibit 3, page 2, " The Most Significant Items in Handling Emergency Call Are: ", 3.01 (c), (e), (f); See Comments in Response to AT&T's Motion For Summary Decision [by the FCC] December 6, 1994, page 3., para. 3, first sentence.

PF 20 **Disagree**

This has little to do with this case due to the human element [Ms. Nancy Zolnikov] , possible stress situation and overly broad and vague AT&T operation policies.

See PF 16; PF 17; FRE 901 (a), and FRE 901 (b) (1); see PF 15, " ...little button .."; AT&T's Privacy of Communications at Text, AT&T Evidentiary Ex. 4, page 1, (P.5), par. 5 and 6 contains two exceptions to these " ...as required in the proper management of the business. ", in par. 6 [In the management of the business], AT&T exhibit 3, emergency calls AT&T OSOP manual, Division C Section 21 March 1980, 3. Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are [(e) **Take whatever action appears necessary to give the service needed, deviation from operating procedures when necessary.**, does not limit but gives Ms. Nancy Zolnikov unlimited options to alter any normal procedures whether procedural in the written

AT&T materials for conduct and the laws of the U.S. (and maybe unaware of such laws and regulations) or in the operation of the console to accomplish her emergency task.]; see PF 5 [lack of proper training, not fault of employee] .

PF 21 **Disagree**

See [PF 16; PF 17; FRE 901 (a), and FRE 901 (b) (1)] ; PF 20; see PF 5 at **disagree to**, [lack of proper training, not fault of employee] .

PF 22 **Agreed**

PF 23 **Agreed**

PF 24 **Agreed**

PF 25 **Agreed**

See PF 19 disagree, comments.

PF 26 **Disagree**

AT&T has not stated to which 47 CFR. ch.1 informal complaint rules, if any exist, pertaining to this paragraph 26.

PF 27 The complainant cannot decipher this proposal of fact statement nor its references and it should be disregarded by all parties.

PF 28, page 8 **Agreed**, complainants' investigation persisted in this time period with many of AT&T's objections and delays to information.

PF 29, page 9, first 29

See Comments in the FCC Response to AT&T's' Motion For Summary Decision, December 6, 1994, page 7 to 8, III. The Presiding Judge's Consideration of the Issues Specified by the Commission in its Hearing Designation Order is Not Time -Barred by Section 415 (b) of the Communications Act.

PF 28, page 9, second 28

Disagree with AT&T's mis-characterizing complainants business experience with a threat towards bad or good publicity to mean extortion.

The fact that AT&T's policies are not trustworthy which have effected his family and will affect others in this country has always been the main issue.

It is the complainant's obligation as a U.S. citizen to privately correct this or make this public so others are at least aware of this problem, as expressed in the informal and formal complaints.

Unfortunately AT&T has not chosen to settle their mistakes privately which is the first consideration of any business settlement. The first consideration is no longer a business settlement. but it is to inform the public and U.S. government [FCC] who must be made aware of any problems and threats to freedom and rights of privacy.

See AT&T exhibit 17 pages 1 to 3, letter to Mr. Kmetz from Mr. Freemon; AT&T Exhibit 11; AT&T exhibit 7, page 9, Formal Report Summary and Relief, para. 4, page 10 para. 3, page 11, para. 6, 7;

PF 29, Page 9, second PF 29

See PF 28, page 9, second 28

PF 30

See PF 28, page 9, second 28

AT&T's Proposed Conclusions of Law

PC 1

See PF 29, page 9, first 29

See Comments in Response to AT&T's' Motion For Summary Decision,
December 6, 1994, page 7 to 8, III. The Presiding Judge's Consideration

of the Issues Specified by the Commission in its Hearing Designation
Order is Not Time -Barred by Section 415 (b) of the Communications Act.

PC 2 Disagree

See Judges Exhibit 3 Nancy Zolnikov AT&T deposition on November 7, 1994, page 67, line 13 through page 73, line 10., Mr. Jacoby comments to his understanding at page 71, line 15 and 16 to the clarification to Ms. Nancy Zolnikov "yes" of complainants conversation, page 72, line 7; Judges Exhibit 3 Nancy Zolnikov AT&T deposition on November 7, 1994 [Mr. Elehue K. Freemon " Q. All right. And then you let them talk?"] at page 72, line 8 [**Ms. Nancy Zolnikov's replies " A. Yes "**]; The Commission has stated at HEARING DESIGNATION ORDER, Released: August 12, 1994, page 2, footnote 6, line 5 to line 10 in which the Commission did grant the 911 transcript [identifying the eavesdropper and what the person said] as a administrative evidence to record; see PF 15, " ...little button .."; AT&T's Privacy of Communications at Text, AT&T Evidentiary Ex. 4, page 1, (P.5), par. 5 and 6 contain two exceptions to these paragraphs; " except (as authorized by the customer or (in par. 5)) as required in the management of the business], AT&T exhibit 3, emergency calls AT&T OSOP manual, Division C Section 21 March 1980; 3. Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are [**(e) Take whatever action appears necessary to give the service needed, deviation from operating procedures when necessary.,** does not limited but gives Ms. Nancy Zolnikov unlimited options to alter any normal procedures whether procedural in the written AT&T materials for conduct and the laws of the U.S. (and may be unaware of such laws and regulations) or in the operation of the console to accomplish her emergency task.], see PF 5, PF 4

PC 3 Disagree

See PC 2 Disagree

PC 4 Disagree

See PC 2; see 2nd Restatement notations sections 251 (a), (b); 252; 256; 257 (a), (b), (g) 258; 262, ; [apparently authorized], Sections 161 and 194.

PC 5 Disagree

See PC 2

PC 6

See PC 2

PC 7 Disagree

See PC 1, PF 29, page 9, first 29

See Comments in Response to AT&T's' Motion For Summary Decision, December 6, 1994, page 7 to 8, III. The Presiding Judge's Consideration of the Issues Specified by the Commission in its Hearing Designation Order is Not Time -Barred by Section 415 (b) of the Communications Act.

PC 8 Disagree

See Public Law 90 - 154 component 12, Federal Emergency Management Agency, lg 220/ July 1984, " Consent ", PF 5.

PC 9 Disagree

See PC 1, PF 29, page 9, first 29

PC 10 Disagree

See PC 1, PF 29, page 9, first 29

PC 11 Disagree

See PC 1, PF 29, page 9, first 29

PC 12 Disagree

See PC 1, PF 29, page 9, first 29

Memorandum in Support of
Proposed Conclusions of Law January 30, 1995

Page 1, para. 1 and 2

See PC 2

Pages 2, 3

See PC 2, PC 4, PC 7

Page 4

See PF 5, PC 1

Page 5, 6

See PC 7

Page 7, 8

See PC 2

Page 8, 9, 10

See PC 7

In Conclusion

1. Hopefully AT&T lawyers are quite aware of the differences between the issue of fact and genuine issue of material fact.
2. In Judges Exhibit 3, Nancy Zolnikov, AT&T deposition on November 7, 1994, explains that **the conversation between Mr. Elehue K. Freemon and Mrs. Lucille Freemon, "Mom", did commence similar to regular collect call.**
3. Before the conversation even started, **AT&T had decided to change the call into an emergency call** situation possibly violating U.S tariff laws (taxation) and national public consent laws of privacy and choice.
4. The splitting of the phone lines [In and Out line] is explained by Ms. Nancy Zolnikov as " ... **hold that little button so you won't transmit any messages.** ", and therefore the possibility to blank out Mr. Freemon has been established.

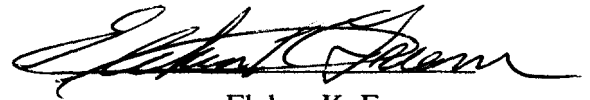
5. The final part of this case, **divulgence, is explained in the 911 transcript and management letters explaining the transcript and the personnel involved** which are on file in Portland, Oregon Bureau of Emergency Agency and the Federal Communication Commission.
6. AT&T has made many attempts to separate Ms. Nancy Zolnikov's actions from the company policies and at the same time has tried to convince the FCC that she took the correct actions.
7. AT&T's flip-flop behavior not only proves a lack of faith in AT&T's very broad and vague emergency company policy and the human element, Ms. Nancy Zolnikov, but also demonstrates the correctness of the complainant(s) claim.
8. And lastly on this point of issue.
9. No one at AT&T really knows what happened, especially not Ms. Linda Wistermayer, Mr. Sharpe or AT&T attorneys, though they have tried to fool the FCC in many previous pleadings and letters.
10. For it was only Nancy Zolnikov and the 911 message taker, Ms. Sharon Lampl who were present for the divulgence, and Nancy Zolnikov and the unsuspecting complainant(s) during the eavesdropping. FRE 901 (a), FRE 901 (b) (1) .
11. The complainant Mr. Elehue K. Freemon, alone have carried the burden of proof in this case, its problems, the defending of my family, mothers health, her safety and protecting my country's privacy rights on this telecommunication issue.
12. I have proven that a telephone conversation did ensue. Evidence for genuine issue of material fact for the divulgence is readily available by the State of Oregon and/or City of Portland
13. The above findings in this text are principally from the Judges Exhibit 3, Nancy Zolnikov AT&T deposition on November 7, 1994 testimony, eavesdropping and within the meaning of section 705 of the Communications Act, etc.
14. AT&T can neither change these findings nor cover them up any longer.
15. The genuine issues of material facts brought forth by Mr. Freemon should allow Judge Miller's issue of fact statement in his Memorandum Opinion and Order issued December 8, 1994, Paragraph 5., foot note 2, concerning the lack of trust to be put into Mr. Freemon's formal complaint "This complainant is beyond trust" and Mr. Freemon's attempts for relief to be seriously reviewed by said judge. This statement was made before the hearing on December 12, 1994.
16. To finally put a cap on the timebarred issue, as noted before, AT&T is in an Administrative hearing of an agency of the U.S government and is guided under

particular rules to this agency to protect the people in its care from themselves as well as from untrusting carriers.

17. Congress has given broad authority to its agencies that are not allowed anywhere else in our judicial system, even from agency to agency if good cause can be shown and it has.

18. Wherefore, the complainant Mr. Elehue K. Freemon requests that the Presiding Officer and/or Commission adopt the foregoing complainants reply in regard to AT&T's proposed findings of fact, conclusions of law and memorandum in support of proposed conclusions of law, January 30, 1995.

Respectfully submitted,



Elehue K. Freemon

General Delivery

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(909) 866-8714

Date February 13, 1995

Certificate of Service

I, Dr. Gisela Spieler, hereby certify that a true copy of the foregoing "Reply" to AT&Ts proposed findings of fact and conclusions was served on the 14th day of February, 1995 by U.S. mail, postage prepaid, express mail *upon the parties listed below:

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I, ELEHUE KAWIKA FREEMON, being duly sworn deposes and says:


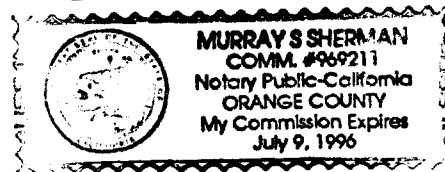
I hereby swear that the forgoing **Reply** to AT&Ts Proposed Findings of fact and conclusions proposed and presented herewith under the provisions of the Federal Administrative Procedure Act and under the of Administrative Law Judge Miller to be true and correct to the best of my knowledge and belief.



Elehue K. Freemon

Complainant

Sworn to before me this 13th day of February 1995


Notary Public Signature

Notary Seal

February, 13, 1995

Date